JD–15–03
Wales, WI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CTS, INC.,

and Case No. 30-CA-16057-1

INTERNATIONAL UNION OF BRICKLAYERS &
ALLIED CRAFT WORKERS, DISTRICT COUNCIL
OF WISCONSIN,

Eryn M. Doherty, Esq., for the General Counsel.

Owen Jones, of New Berlin, WI, Field Representative
of the Charging Party.

Kevin J. Kinney, Esq. (*Krukowski & Costello, S.C.*),
of Milwaukee, WI, for Respondent.

DECISION

Findings of Fact and Conclusions of Law

Benjamin Schlesinger, Administrative Law Judge. On June 1, 1999, the Associated General Contractors of Wisconsin (AGC) and the Bricklayers & Allied Craftworkers Local Unions #1, #3, #6, #7, #9, #11, #13, #19, #21, #34 and the Wisconsin District Council (Union) entered into a collective-bargaining agreement for the period from June 1, 1999, to May 31, 2002. On June 10, 2002, the same parties entered into a new agreement, effective from June 1, 2002, to May 31, 2005. Respondent CTS, Inc., was bound by the 1999–2002 agreement, but has not complied with the 2002–2005 agreement, which the complaint[1] alleges is a violation of Section 8(a)(5) and (1) of the Act. Respondent denies that it violated the Act in any manner.

Respondent, a corporation with an office and place of business in Wales, Wisconsin, has been engaged in plastering, drywalling, insulating, and fireproofing construction. During calendar year 2001, Respondent purchased and received goods valued in excess of $50,000 directly from suppliers located outside Wisconsin. I conclude that Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

On August 22, 2001, Lloyd Gleason, Respondent's president, signed an Independent Contractor – Assumption of Agreement, in which he agreed to "assume and be bound by all the

[1] The District Council filed its charge against Respondent on July 1 amended it on August 14, 2002. The complaint issued on August 20, and the hearing was held in Milwaukee, Wisconsin on November 4, 2002.`

terms and provisions of" the 1999–2002 agreement. In turn, that agreement provided in Section 3.4:

> The Union recognizes the Associated General Contractors of Wisconsin as the bargaining unit for all Employers who have so authorized the Association for all work covered hereunder. The Association agrees to furnish the union lists of such employers prior to June 1, 1999, and upon request thereafter. Upon such authorization any employer shall become a member of the multi-employer bargaining unit here involved and thereby a party to this Master Agreement. Individual employers who have not so authorized the Association shall, by becoming party to this Master Agreement, also become part of said multi-employer bargaining unit, and said individual employer authorizes the Associated General Contractors of Wisconsin, to negotiate successor Master Agreements on its behalf and said individual employer specifically adopts all provisions of any successor Master Agreements entered into between the Associated General Contractors of Wisconsin and the Union. Withdrawal from the multi-employer bargaining unit may be accomplished only by written notice to the Union and to the Association, at least sixty (60) days, but no more than ninety (90) days prior to the date of expiration of this Agreement or of any renewal period hereof. Notice to the Association, wherever is required herein, shall constitute notice to each and all members of the multi-employer bargaining unit.

On February 25, 2002, Respondent wrote to the Union:

> "As per Article I, Duration of Agreement, Section 1.1 of the current contract for 1999–2002 we are terminating our agreement as of May 31, 2002, unless a settlement is reached before such time."

The General Counsel's theory is that Respondent's letter could not lawfully rescind its earlier agreement to be bound by all contracts entered into by AGC. That is accurate. The letter failed in three respects. First, it was untimely. The agreement specifically stated that withdrawal had to be made at least 60 days but no more than 90 days prior to the expiration of the agreement, May 31, 2002. The appropriate dates were, therefore, March 1 to March 31, 2002. Respondent was early by 6 days. Second, Section 3.4, quoted above, requires that written notice be provided to both the Union and the AGC. Respondent's letter was sent only to the Union and thus did not comply with the notice that Respondent agreed to provide.

Third, Gleason's notice was conditioned upon no settlement being made before May 31, 2002. If a settlement—and the letter, considered alone, does not make clear who the parties to the settlement are—had been reached before then, he would have been bound by the settlement, under the terms of his own letter. Equally important, Respondent, having agreed to authorize the AGC to act as its bargaining representative and having agreed to be a part of the multiemployer bargaining unit, never indicated in its letter that it was withdrawing its authority from the AGC or withdrawing from the unit. Accordingly, his letter was not clear and unequivocal, but was conditional and did not demonstrate an abandonment of the multiemployer unit and an intent to deal with the Union individually, as required by *Retail Associates*, 120 NLRB 388, 394 (1958).

Respondent defends on two grounds. The first is that the complaint does not allege that the 1999–2002 agreement was ever terminated by the Union and AGC and that, because there was no proof that they did, the agreement must have been extended for a year, at least as to Respondent, which has continued to abide by its terms. However, that was not what

Respondent agreed to. It agreed to be bound by the then master agreement, the 1999–2002 agreement, and all successor agreements, the first of which is 2002–2005 agreement. Even had one of the parties to the 1999–2002 agreement not properly terminated the agreement, and the record evidence makes that most doubtful, the propriety of the notice was a matter to be raised by the parties to that agreement and not Respondent. In any event, if Respondent wished to rely on the failure to properly terminate the agreement, it was its burden to prove that, not the General Counsel's. There was no proof supporting this defense, and I reject it.

Respondent's second defense is that it did not manifest an unequivocal intention to be bound by group bargaining. While conceding that the multiemployer language relied on in *Ruan Transport Corp.*, 234 NLRB 241, 242 (1978) and *Schaetzel Trucking, Inc.*, 250 NLRB 321 (1980), is certainly different from Section 3.4, Respondent nonetheless contends that the legal principles enunciated by the Board remain unchanged: that it will examine all relevant evidence to determine whether an employer has evidenced clear and unequivocal intent to be bound by group bargaining. The only reason that the Board did so in those decisions was that the multiemployer language relied on was, in *Ruan Transport*, ambiguous, or, in both decisions, lacked a delegation of authorization to represent the employer in future negotiations. In order to explain the ambiguity or to determine the scope of the authorization, the Board felt compelled to look at the employer's conduct indicating an intent to be bound by group action. Here, however, the language is unambiguous. There is specific delegation to AGC. No external evidence is necessary or should be considered. The above-quoted Section 3.4, contrary to Respondent's contention, is sufficient. This is the agreement that Respondent chose to make, and Respondent is bound by it.

However, while Respondent indicated its unequivocal intent to be bound by group bargaining by assuming 1999–2002 agreement, the Union did not desire to hold Respondent to its agreement. Thus, on February 20, 2002, the Union sent the following letter to "ALL CONTRACTORS," including Respondent:

> Re: Bricklayers & Allied Craftworkers Local # 1, #3, #6, #7, #9, #1 l, #13, #19, #21, #34 WI 1999–2002 Labor Agreement
>
> Pursuant to the provisions of the Bricklayers & Allied Craftworkers International Union Local #1, #3, #6; #7, #9, #11, #13, #19, #21, #34 Wisconsin 1999–2002 Labor Agreement the BAC District Council of Wisconsin hereby gives notice to terminate the agreement effective on the termination date (May 31, 2002).
>
> It is the intention of the District Council to negotiate changes and modifications to the current agreement and to incorporate these modifications into a new agreement.
>
> Representatives of the District Council are ready and willing to meet and confer with you on mutually convenient dates.

The Union terminated the agreement and wanted to negotiate changes and modifications with its contractors individually—the letter is addressed to the "contractors," not the AGC—and to make a new agreement. The letter closes with the specific offer to meet and confer with the individual contractors on mutually convenient dates. Gleason could only assume from a reading of this letter that his obligations under the 1999–2002 agreement had ended, and that prompted him and his office to call the Union to find out what kind of letter he should write. Unfortunately, the Union chose not to answer, so Gleason, within four days after receiving the Union's letter, wrote the Union that he, too, terminated the agreement, unless he reached a

settlement with the Union before then, and he repeatedly called Union Field Representative Owen Jones in early Spring to set up a meeting, albeit without success.[2] What Gleason was saying in his letter, in layman's language, is that he would have no agreement with the Union, unless a settlement before the termination resulted in a new contract.

In sum, the Union terminated the agreement, and Respondent agreed that it was terminated. The Union offered to bargain individually with Respondent, an offer which is antithetical to the Union's present claim that Respondent was bound by multiemployer bargaining. The Union should not now be permitted to resurrect what it freely ended and force an unwanted multiemployer agreement on Respondent, which correctly believed, from the Union's letter, that it was no longer bound by its agreement to be a part of a multiemployer bargaining unit.[3]

On these findings of fact and conclusions of law and on the entire record, including the briefs submitted by the General Counsel and Respondent, I issue the following recommended[4]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. February 11, 2003

Benjamin Schlesinger
Administrative Law Judge

[2] I discredit all of Jones' testimony to the contrary. To the extent that Gleason asked about the status of the negotiations between the Union and the AGC, that did not indicate his attempt to accept or reject their agreement, but merely to aid him in his own negotiations.

[3] Although factually distinguishable, this conclusion finds support in Board decisions finding that a union acquiesced in an employer's faulty or untimely notice of withdrawal from a multiemployer unit. See, e.g., *I.C. Refrigeration Service*, 200 NLRB 687, 690 (1972).

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.